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In re Application of  
DAFNI, Ehud, et al.  
U.S. Application No.: 09/380,654  
PCT No.: PCT/IL98/00074  
International Filing Date: 12 February 1998  
Priority Date: 20 February 1997  
Attorney's Docket No.: 043/01136  
For: REAL-TIME DYNAMIC IMAGE  
RECONSTRUCTION

DECISION ON  
PETITION TO REINSTATE  
AND/OR REVIVE AND PETITION  
FOR CORRECTED FILING DATE

This decision is issued in response to the "Petition To Correct Filing Date" filed on 21 October 1999 and the "Petition To Reinstate And/Or Revive" filed on 10 January 2000. No petition fee is required.

**BACKGROUND**

On 12 February 1998, applicants filed international application PCT/IL98/00074 which claimed a priority date of 20 February 1997 and which designated the United States. On 27 August 1998, a copy of the international application was forwarded to the United States Patent and Trademark Office ("USPTO") by the International Bureau.

On 12 July 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 20 August 1999.

On 24 August 1999, applicants filed a transmittal letter for entry into the national stage in the United States which indicates that it was accompanied by, among other materials: (1) a copy of the international application, and (2) an unexecuted declaration. The transmittal letter also authorized a charge to Deposit Account No. 03-3419 for \$1,212 (including \$840 for the basic national fee). In the present petitions, applicants assert that these materials were deposited as "Express Mail" on 19 August 1999. However, the documents in the file all bear a 24 August

1999 receipt stamp, and none of the materials indicate that they were sent by Express Mail or reference an Express Mail label number. After this submission, applicants were sent a return postcard with a 24 August 1999 receipt stamp.

On 21 October 1999, in response to the return postcard, applicants filed the "Petition To Correct Filing Date" considered herein.

On 06 December 1999, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to pay the basic national fee within 30 months of the priority date.

On 10 January 2000, in response to the Notification Of Abandonment, applicants filed the "Petition To Reinstate And/Or Revive" considered herein.

### **DISCUSSION**

#### **A. "Petition To Correct Filing Date"**

Applicants' petitions are both based on the same argument. Specifically, applicants argue that the 24 August 1999 filing date accorded to the materials submitted to initiate this national stage application (including the authorization for payment of the basic national fee) should be changed to 19 August 1999, the date on which applicants assert that these materials were deposited as Express Mail for delivery to the USPTO. In order to obtain such a change, however, applicants must submit a grantable petition under 37 CFR 1.10(c).

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date - in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date - in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date - in," and of any other official notation by the USPS relied upon to show the date of deposit.

In this case, applicants have not satisfied item (2) above. A review of the transmittal letter containing the authorization to pay the basic national fee, as well as the other materials submitted therewith, reveals that none of the materials contains the "number of the Express Mail mailing label."

Accordingly, the 24 August 1999 filing date accorded these materials upon their receipt in the USPTO remains in affect. Because the authorization to charge applicants for the basic national fee was not filed until 24 August 1999, after the 30 month deadline of 20 August 1999, the Notification Of Abandonment mailed on 06 December 1999 was properly issued.

**B. "Petition To Reinstate And/Or Revive"**

The petition filed on 10 January 2000 is titled "Petition To Reinstate And/Or Revive." However, the petition does not expressly refer to 37 CFR 1.137(b), it does not include the requisite petition fee, and it does not include a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional," as required in a grantable petition to revive under 37 CFR 1.137(b). Rather, the petition asserts that the holding of abandonment in the present application is "the result of an inadvertent Patent Office clerical error" and again asserts that the national stage application papers were timely filed on 19 August 1999 by Express Mail. Accordingly, this petition has not been treated as a petition to revive under 37 CFR 1.137(b), but rather a further petition under 37 CFR 1.10.

**CONCLUSION**

Applicants' "Petition To Correct Filing Date" filed on 21 October 1999 and the "Petition To Reinstate And/Or Revive" filed on 10 January 2000 are both **DISMISSED** without prejudice.

The application remains **ABANDONED** as of midnight on 20 August 1999.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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